IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8554 of 2002
WITH
SPECIAL CIVIL APPLICATION No 8556 of 2002
WITH
SPECIAL CIVIL APPLICATION No 8559 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BESTA COSMETICS LTD.

Versus

UNION OF INDIA

Appearance:
MR.D.G.TRIVEDI FOR NANAVATI ASSOCIATES for
Petitioner Nos. 1-2
MR DN PATEL for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.R.DAVE

and

MR.JUSTICE D.A.MEHTA

Date of decision: 23/09/2002

COMMON JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 The common grievance which has been ventilated in all the three petitions is that inspite of an order passed by the Commissioner (Appeals), Central Excise & Customs, Surat, the respondent authorities have not made payment of the amount of refund payable by the respondent authorities to the petitioners.

2 Mr.D.G.Trivedi, learned Advocate appearing for the petitioners in all the cases has submitted that the petitioners in all the three petitions had claimed a sum of Rs.43,61,900/-, Rs.35,07,858/-, Rs.36,30,350/- respectively by way of refund from the respondent authorities by submitting applications to the concerned Deputy Commissioner, Central Excise and Customs. The said applications for refund had been rejected and therefore the appeals had been filed by the petitioners before the Commissioner (Appeals), Central Excise and Customs, Surat. By an order dated 24/4/2002 the Commissioner (Appeals), Central Excise and Customs had allowed the appeals and had directed the respondent authorities to make the payment of the refund claimed by the petitioners.

3 It has been submitted by the learned Advocate appearing for the petitioners that inspite of the said order dated 24.04.2002 passed by the Commissioner (Appeals), Central Excise and Customs, Surat, the respondent authorities have not made payment of refund payable to the petitioners along with interest thereon. It has therefore been prayed in the petitions that the respondent authorities be directed to comply with the Order-in-Appeal dated 24.04.2002 referred to hereinabove. It has been submitted by the learned Advocate that there is no justifiable reason for not making payment of the said refund.

4 In pursuance of the notice issued by this Court Mr.D.N.Patel, learned Senior Central Government Standing Counsel has appeared for the respondent authorities and has submitted that the petitioners do not have any right to get the amount of refund payable under the order dated 24.04.2002 passed by the Commissioner (Appeals), Central Excise and Customs, at this stage, for the reason that

against the said order the respondent authorities have already filed appeals before the CEGAT and the said appeals are pending. Moreover, it has also been submitted that applications for Stay have also been filed and the said applications have not been heard so far. It has been submitted by him that the respondent authorities have a very good case and they are likely to succeed in the appeal and if ultimately the respondent authorities succeed in the appeals and the order passed by the Commissioner (Appeal), Central Excise and Customs is set aside, no amount will have to be paid by way of refund to the petitioners.

5 We have heard the learned Advocates and have also perused the order which is sought to be implemented by the respondents. Upon perusal of the papers it is very clear that the Commissioner (Appeals), Central Excise and Customs has directed that the amount of refund referred to hereinabove is to be paid to the concerned petitioners. It is true that the order passed in appeal dated 24.04.2002 is the subject matter of appeals which are pending before the CEGAT. It is equally true that the applications for stay have been filed by the respondent authorities before CEGAT but till date the said applications have not been decided.

6 It cannot be the dispute that if an order has been passed by the appellate authority, it has to be complied with unless implementation of the order passed by the appellate authority is stayed. In the instant case, the appeals and the stay applications have been filed before the CEGAT but the implementation of the order dated 24.04.2002 has not been stayed and therefore the respondent authorities cannot be permitted to say that no amount of refund is payable by them to the petitioners.

7 The above view has been upheld by the Apex Court in the case of Union of India Vs. Kamalakshi Finance Corporation Limited [1991] (55) E.L.T.433 (S.C). Looking to the above legal position, in our opinion, the respondent authorities are not justified in retaining the amount payable to the petitioners. We, however, take note of the fact that the respondent authorities have filed appeals and stay applications which are pending before the CEGAT. Looking to the said fact, we direct that if the respondent authorities do not get implementation of the order dated 24.04.2002 passed by the Commissioner (Appeals), Central Excise and Customs stayed within a period of eight weeks from today, the petitioners shall be paid the amount as directed to be

paid to them by Commissioner (Appeals), Central Excise and Customs under his order dated 24.04.2002 along with interest thereon as prescribed under the provisions of the Central Excise and Customs Act,1944. The said refund shall be made available to the petitioners within a period of one week from the completion of the above referred period of eight weeks. Needless to say that if after completion of the said period, implementation of the order dated 24.04.2002 passed by the Commissioner (Appeals), Central Excise and Customs is stayed, the amount of refund paid to the petitioners shall be subject to the orders which may be passed by the CEGAT.

8 Needless to say that if during the period of eight weeks from today, the applications for stay filed by the respondent authorities before the CEGAT are rejected, the amount payable to the petitioners with interest thereon shall be paid within a period of one week from the date on which the stay applications are rejected.

9 In view of the aforesaid directions, all the three petitions are allowed. Rule is made absolute with no order as to costs. Writ to be sent forthwith.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt